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EXAMINER

GELLNER, JEFFREY L

ART UNIT

PAPER NUMBER

3643

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Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Priority

Receipt is acknowledged of the certified copy of the priority document for CA 2,431,523, received 16 September 2004, submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Election/Restrictions

Applicant's election of Species A in the reply filed on 10 August 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 8 and 10 are withdrawn from prosecution because they are drawn to non-elected species.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 6, the "said medium retaining members" should be --said plurality of medium retaining members-- so as to conform with the language of claim 1, line 5. Throughout

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claims 2-6 the “said medium retaining members” should be --said plurality of medium retaining members-- so as to conform with the language of claim 1, line 5

In claim 3, line 2, “feeding a liquid to said medium retaining members while said apparatus is rotating” is indefinite because it appears to be a method step in an apparatus claim.

In claim 5, line 2, “each end” lacks antecedent basis.

In claim 5, line 4, “different size rings” should be --the single ring can be of different sizes-- to preclude antecedent basis problems.

In claim 7, line 8, the “said medium retaining members” should be --said plurality of medium retaining members-- so as to conform with the language of claim 1, line 6.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Markovets et al. (SU 1519595 A).

As to claim 1, Markovets et al. discloses a rotary growing apparatus (see Fig.) comprising a single ring (3 of Fig. 3); a support means for the ring (not shown but implicit since the ring is vertical in the Fig.); means for rotably driving the single ring about a rotational axis of the ring (from “drive” of abstract in English); a plurality of medium retaining members (5 of Fig.) extending transversely of the ring (see Fig.), each of the plurality of medium retaining members

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being secured to the ring (see Fig.); and, at least one light source interiorly of the ring (see Fig. for light source in center of ring).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markovets et al. (SU 1519595 A).

As to claim 2, the limitations of claim 1 are disclosed and described above. Not disclosed is the plurality of medium retaining members removably secured to the single ring by a clip mean. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Markovets et al. by using a clip means to attach the medium retaining members depending upon

As to claim 5, the limitations of claim 1 are disclosed and described above. Not disclosed is the ring make of ring segments with attachment means. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Markovets et al. by making the ring adjustable with ring segments so as to fit in varying spaces.

As to claim 7, Markovets et al. discloses a rotary growing apparatus (see Fig.) comprising at least one ring (3 of Fig. 3); a support means for the ring (not shown but implicit since the ring is

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vertical in the Fig.); means for rotably driving the single ring about a rotational axis of the ring (from “drive” of abstract in English); a plurality of medium retaining members (5 of Fig.) extending transversely of the ring (see Fig.), each of the plurality of medium retaining members being secured to the ring (see Fig.); and, at least one light source interiorly of the ring (see Fig. for light source in center of ring). Not disclosed is the ring make of a plurality of ring segments with attachment means. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Markovets et al. by making the ring adjustable with ring segments so as to fit in varying spaces.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Markovets et al. (SU 1519595 A) in view of Knappe et al. (DE 2639088 A1).

As to claim 3, the limitations of claim 1 are disclosed and described above. Markovets et al. further discloses a liquid feeding means (9 and inside of outer wheel of Fig.) designed to feed liquid to the plurality of medium retaining members. Not disclosed is the feeding in the upper quadrant of its rotation. Knappe et al., however, discloses feeding of medium retaining members from above (6 of Fig. 1) which would be the upper quadrant. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Markovets et al. by using the liquid feeding means of Knappe et al. so as to not douse the plants and flood the soil so as to promote better plant growth.

As to claim 4, the limitations of claim 3 are disclosed and described above. Not disclosed are apertures formed on the back of the retaining members. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of

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Markovets et al. as modified by Knapp et al. by adding drainage holes in the retaining members so as to not saturate the soil.

Allowable Subject Matter

Claim 6 and 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.


Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Marchildon ('396 A1), Marchildon ('321 B2), Loeb, Lindgren, Blake, Fleming, Leduc et al., FR 2680074 A1, DE 10013737 A1, ~~WO 02/063945 A1~~, DT 1582741, EP 0220348 A1, EP 0233663 A1, WO 02/063945 A1, JP 2-283221, JP 2004-97012, JP4-311324 disclose in the prior art various growing systems with rings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off, if attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

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A handwritten signature in black ink, appearing to read 'Jeffrey L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner
Primary Examiner
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